IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3485 of 1992

RAJ.GROUND WATER DEPARTMENT SC.ASSCO.
V/S
STATE OF RAJ & ORS

Mr. HARISH PUROHIT for Mr. SANJAY MATHUR, for the appellant / petitioner

Mr. BL BHATI, AGA,) for the respondent
Mr. MR SINGHVI,)

Date of Order : 17.4.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioner Association, and individual petitioner seek a direction to respondents to give effect to the order dt. 17.2.1990 Annexure-4 pertaining to the upgradation of the post of Technical Assistant to the rank of Junior Hydrogeologist, and be restrained from making appointment on the post of Junior Hydrogeologist by direct recruitment against the posts available by upgradation. Then, the advertisement issued by the Rajasthan Public Service Commission inviting application from the eligible candidates for direct recruitment have been prayed to be quashed. Then, a prayer has also been made to increase the promotion quota.

The allegation of the writ petition are that the

services of members of the petitioner Association are governed by Rajasthan Ground Water Sub-ordinate Service Rules, 1973, they are working on the post of Technical Assistant, next promotion is to the post of Junior Hydrogeologist provided under the Rajasthan Ground Water Service Rules, 1969, and this post is required to be filled to the extent of 25% by promotion, and 75% by direct recruitment, eligibility for the candidates to be promoted has also been provided. Then, it is alleged that 40 Technical Assistants are working who were required to be considered for promotion. However, no promotion has been made for the last 12 years, as such there is stagnation. The members, therefore, agitated the matter, their grievance was appreciated, and the Chief Engineer recommended and ultimately an order Annexure-4 came to be passed being dt. 17.2.1990 to the effect that the posts were upgraded, and the upgraded posts were to be filled by promotion, and that eight posts of Technical Assistants were upgraded to the rank of Junior Hydrogeologist. It is then pleaded that this order Annexure-4 is not being given effect to, and the respondents are going to fill these posts by direct recruitment. A reply has been filed contending inter alia that at present 41 posts of Technical Assistants are sanctioned against which 39 persons are working, and the Technical Assistants were promoted from time to time on the recommendations of D.P.C. It was pleaded that the last D.P.C. met on 27.8.1992 for

considering promotion in the year 1991, and 1991-92 wherein Shri N.K.Purbiya, and A.K.Mathur were considered and promoted on the recommendations of the D.P.C. from the post of Technical Assistant. Thus, the averment is pleaded to be wrong and that no promotions are being made. Then, regarding increasing promotion it was submitted that the matter is pending consideration before the State Government. Then, in para-9 in the reply it was pleaded that all the promotion posts are to be filled according to seniority as per existing service rules, and the same was being done. This reply was filed on 28.7.1993. Then, on 1.2.1994 an application was filed to the effect that after filing of the reply an order dt. 18.1.1994 has been issued by the Government amending the order dt. 17.2.1990 which was sought to be produced as Annexure R/1. Thereafter vide order dt. 4.3.1994, this order was taken on record. It may be noticed that initially vide order dt. 9.7.1992 interim stay was granted by this Court. Then, by this order dt. 4.4.1994 that stay order was vacated. After filing of the aforesaid writ petition, the petitioner filed rejoinder on 27.1.1999 inter alia contending that during pendency of the writ petition promotion quota has been increased to 50% from 25%, and the order Annexure-4 was not given effect to rather the posts were filled from promotee and direct recruitee in the ratio of 25:75. Then, it was pleaded that the order Annexure-4 was passed with the assent of the Governor while Annexure R/1 is passed without any such

sanction, and that the order passed with the approval of the Governor cannot be modified or amended without assent of the Governor. With this it was prayed that the writ petition be allowed.

On 7.12.1993 an application has also been filed by three persons Shri R.S.Vyas, Man Mohan Kant, and Krishna Chandra Mishra claiming to be persons who had applied for appointment to the post of Junior Hydrogeologist against direct recruitment quota, and their names were kept by the R.P.S.C. in the reserve panel. Thus, claiming to be vitally affected by the writ petition, they sought to be impleaded as party. However, it appears that since vide order dt. 9.4.1993 the interim stay was vacated, this application lost its significance, and was, therefore, not persuaded, and in my view, rightly so.

From the above pleadings, it is clear that firstly the promotion quota has already been increased from 25 to 50%, so far Annexure-4 is concerned, vide Annexure R/1, Annexure-4 has already been amended, and thus Annexure R/1 despite being brought to the notice of the petitioner, and having been taken on record by the Court has never been challenged by the petitioner by appropriately amending the writ petition. Likewise, even in the rejoinder this fact has not been disputed that the D.P.C. last met on 27.8.1992 for considering promotion against the vacancies of the year

1990-91 and 1991-92, and having recommended Shri R.K.Purabiya, and A.K.Mathur who had been promoted, nor this fact has been controverted that the Technical Assistant were promoted to the post of Junior Hydrogeologist from time to time on the recommendations of D.P.C. Thus, it is also clear that the petitioner has made a clear mis-statement in para-4 of the writ petition. Thus, in the totality of circumstances, including the fact that the petitioner is guilty of making deliberate mis-statement of fact, so also that the order Annexure R/1 has not been challenged, and it having not been satisfactorily shown to the Court that promotions are not being made in accordance with law. I do not feel inclined to grant any relief to the petitioners in this writ petition.

The writ petition is, therefore, dismissed.

(N P GUPTA),J.

/Sushil/